REMARKS/ARGUMENTS

This reply is in response to the Final Office Action mailed on November 12, 2008 and the Advisory Action mailed on January 27, 2009.

Claims 23-52 are pending. Claims 23 and 26 have been amended to remove superfluous language. No new matter is added.

New claim 51 derives from the specification as filed at paragraph [0049].

New claim 52 derives from the specification as filed at paragraph [0064].

Rejections Under 35 U.S.C. §103(a)

A. Claim 23 stands rejected under 35 U.S.C. § 103(a) as being obvious over *Bailey et al.* (U.S. Patent No 6,368,545) in view of *Agouri et al.* (U.S. Patent No. 4,126,648). Applicants respectfully traverse this rejection and request reconsideration, as one skilled in the art would not look to *Agouri* and thus a *prima facie* case has not been made.

Bailey does not disclose a film having a core layer with a blend of 60-90 wt% LDPE and 10-40 wt% HDPE as claimed by Applicants in Claim 23. The Examiner has pointed to *Agouri* as "teach[ing] a film having 60-90 wt.% low density polyethylene and 40-10 wt.% high density polyethylene (column 2, lines 16-20) for the purpose of obtaining a film having superior properties to a film comprising high density polyethylene alone (column 5, lines 60-64)"[1] and stated that it would have been obvious to use the blend in *Agouri* in the film of *Bailey* in order to obtain a film having superior properties. Applicants respectfully disagree.

Agouri is directed to films/sheaths having a satiny aspect containing styrene-grafted blends of LDPE and HDPE and/or PP that have hand and rustling properties that are at least equivalent and in some cases superior to films/sheaths produced from just HDPE. *See Agouri* Column 1, Lines 44-55. At column 5, lines 60-64, *Agouri* teaches that the "LDPE must be mixed with HDPE or PP prior to the grafting of the styrene monomer if it is desired to obtain . . . sheaths having [the desirable] properties." (emphasis added). *Agouri* is directed to styrene-

[1] Office Action, page 2.

containing polymers for use in sheaths and in fact states that, without such functionality, polyethylene (LDPE or LLDPE) alone is insufficient.

As stated in Applicant's last response, *Agouri* would not be looked to by one skilled in the art because it is not teaching the use of LDPE (or LLDPE) in making films, but in fact teaching away from using low-density polyethylene:

- **Problem being solved in Agouri**: It is known that LDPE is not adapted for use in producing films for sheaths because it is too soft and does not exhibit rustling property. (Col. 1, lines 35-41).
- **Solution in Agouri:** Prepare a film made from styrene-grafted LDPE. (Col. 1, lines 62-66).
- **Applicant's Traversal:** One skilled in the art would not be motivated to combine the teaching in *Agouri* (styrene-grafted LDPE) with *Bailey* to arrive at a three-layer film of claims 23 and 24 (comprising LLDPE and styrene-free mPE, respectively);
    - *Agouri* teaches away from using styrene-free polyethylenes ("rustling" characteristic, see col. 5, lines 31-36, Table III); and
    - Changing the LDPE of *Bailey* to the styrene-modified polyethylene of *Agouri* would render the invention in *Bailey* unsatisfactory for its intended use in, for example, bread bags (*Agouri* seeks polyethylenes with the "rustling" characteristic, see col. 5, lines 31-36, Table III, specific for certain types of packaging).
    - Point of Law: "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." MPEP § 2143.01 II.V. (8th ed, Rev. 7).
    - Point of Law: "It is improper to combine references where the references teach away from their combination." MPEP § 2145 X.D.2.

In the Advisory Action, the Examiner has stated that *Bailey* is not limited to LDPE that is not modified with styrene and that it is unclear why a rustling characteristic would necessarily prevent the making of the bread bag in *Bailey* using the styrene-grafted blend of *Agouri*. *Bailey*

is directed towards films for use in packaging applications, such as bread bags, that have good optical properties such as high-clarity and low haze. *See Bailey* Column 2, Lines 15-21 and Column 3, Lines 41-49. *Agouri* would not be looked to by one skilled in the art because it teaches the use of styrene-grafted mixtures of LDPE and HDPE and/or PP which produce films/sheaths with a *satiny* aspect and have a rustling characteristic. The *satiny* appearance of the films in *Agouri* would be inconsistent with the goal of *Bailey* in producing films with *high clarity*. Additionally, *Agouri* teaches away from the use of LDPE (or LLDPE) in making films as they don't have the required rustling properties. *See Agouri* Column 1, Lines 36-42. Applicants films do not contain styrene-grafted blends. Additionally, Applicants films are *shrink films*. Neither *Bailey* nor *Agouri* disclose the use of films in shrink applications such as collation shrink films.

The Federal Circuit in *Takeda Chemical v. Alphapharm PTY*, 492 F.3d 1350 (Fed. Cir 2007) held that a reference that teaches away from a claimed invention, especially in chemical cases, renders the invention non-obvious in light of the reference. In that case, a compound similar to that being claimed was disclosed in the prior art, but also found to have detrimental (unfavorable) aspects. Thus, the court found this to be a teaching away and the patentee's invention was non-obvious. The court stated that "We do not accept Alphapharma's assertion that *KSR* . . . mandates reversal. Relying on *KSR*, Alphapharma argues that the claimed compounds would have been obvious because the prior art compound fell within 'the objective reach of the claim,' and . . . obvious to try." *Id.* at 1359. The court then stated they did not agree with Alphapharma's argument, stating that "the closest prior art compound . . . exhibited negative properties that would have directed one of ordinary skill in the art away from that compound." *Id.* (emphasis added). Such is the case here. The styrene-modified polyethylenes of *Agouri* are directed to a different purpose (i.e., films with a rustling characteristic and satiny appearance) that those of *Bailey* (i.e., high clarity films) and those being claimed (i.e., collation shrink films), and combining the teaching of *Agouri* with either would be contrary to the purpose of *Agouri*, *Bailey* and the current invention.

Applicants thus request the withdrawal of this rejection.

B. Claims 24-50 stand rejected under 35 U.S.C. § 103(a) as obvious over *Bailey et al.* (US 6,368,545) in view of *Agouri* and further in view of *Lind et al.* (US 2001/0003624). Applicants traverse this rejection for the same reasons as above in (A) and add the following comments.

Neither *Bailey* nor *Agouri* disclose a film having a skin layer comprising a metallocene polyethylene that is prepared from ethylene and at least one C_3 to C_{12} α-olefin monomer and has a density in the range of 0.910 to 0.940 g/cm^3. *Lind* has been cited as it describes metallocene ethylene copolymers that are copolymers of ethylene and a C_3 to C_{20} α-olefin having a density in the range of 0.854-0.97 g/cm^3 that can be used in films. *See Lind* [0020] and [0023]. Applicants submit that it would not have been obvious to one skilled in the art at the time of invention to combine the teachings of the 3 references to arrive at the films described in Claim 24 (or Claim 23).

As described above, *Agouri* does not disclose the use of styrene-free blends of LDPE and HDPE, and in fact, *Agouri* teaches away from the use of styrene-free polymers ("rustling" characteristic, see col. 5, lines 31-36, Table III). Further the films of *Agouri* have a satiny appearance which would be inconsistent with the films desired in *Bailey* that have high clarity. Thus, using the blend in *Agouri* in the core layer of the film in *Bailey* would render the film of *Bailey* unsatisfactory for its intended use. As noted in the Office Action on page 2, *Lind* does not disclose the use of a blend of 60-90 wt% LDPE and 10-40 wt% HDPE. Thus, the use of *Lind* does not alleviate the failure to of *Bailey* to disclose the blend in layer B claimed in Claim 24.

Applicants thus request the withdrawal of this rejection.

C. Applicants add new claims 51 and 52. With respect to the new claims 51 and 52, the Applicant contends that these claims are allowable as they are not disclosed in any of *Bailey*, *Agouri* or *Lind*. In particular, *Lind* teaches away from films that do not contain slip and antiblock additives, as the films in *Lind* use antiblock and slip additives in layers 1, 2, 4, and 5 of its five-layer film. It is common to use such additives in bags to reduce the coefficient of friction, among other things. And it is known that films made from metallocene polyethylenes

can have increased coefficient of friction. Thus, it is surprising to have films without such additives.

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If there are any suggestions or questions regarding this amendment, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application. If necessary, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response. Please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1712 (Docket #2003B101A-US).

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Respectfully submitted,

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/Jennifer A. Schmidt/
Jennifer A. Schmidt
Attorney for Applicants
Registration No. 63,040

Post Office Address (to which correspondence is to be sent):
ExxonMobil Chemical Company
Law Technology
P.O. Box 2149
Baytown, Texas 77522-2149
Telephone No. (281) 834-1978
Facsimile No. (281) 834-2495